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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

To: The Commission

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

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SUMMARY

Under the 1996 Act, the Commission must establish national rules and policies to govern the administration and assignment of numbering resources. To date, varying state numbering policies and incumbent LEC control of numbering assignments have resulted in decisions that will impede the development of competition in the wireline and wireless telecommunications markets. A uniform, national policy is mandated by Section 251(e) of the 1996 Act and is required to ensure that carriers are not discriminated against based on the services they provide or the number of customers they serve.

Thus, the Commission should adopt rules that forbid service specific overlays as a form of area code relief. Service-specific overlays plainly discriminate against carriers in the services that are subject to the overlay and would make it difficult for the affected carriers to compete with unaffected carriers.

The Commission also should establish national guidelines to ensure even-handed assignment of NXX codes. Until NXX assignment functions are transferred to an independent third party, it is particularly important for the Commission to prevent discrimination in the assignment of central office codes. Unless telecommunications carriers — both wired and wireless — can obtain numbers on a timely basis and on reasonable and non-discriminatory terms and conditions, they will be unable to compete with incumbent carriers.

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REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding. Specifically, Vanguard responds herein to issues raised in comments filed on May 20, 1996 that directly address the Commission's authority to establish national rules and policies to promote dialing parity, and to govern the administration and assignment of numbering resources.

I. INTRODUCTION

Vanguard's cellular systems serve 28 markets in the eastern half of the United States and cover more than 7.5 million people. As such, Vanguard has a unique and continuing interest in the Commission's policies regarding carrier numbering assignments. It also has an abiding interest in ensuring that its wireless customers can place calls quickly and conveniently.

Vanguard submitted initial comments in this proceeding to ensure that Commission implementation of the numbering and dialing parity provisions of the Telecommunications

Act of 1996[1/] includes proper guidance to state commissions, particularly if any numbering functions are delegated to state agencies. The comments in this proceeding reinforce the need for national policies and guidelines, as well as effective Commission oversight over state-sponsored or imposed numbering policies. A uniform, national policy is required to ensure that carriers are not discriminated against based on the services they provide or the number of customers they serve; indeed, a uniform, national policy is mandated by Section 251(e) of the 1996 Act.

II. THE COMMISSION SHOULD CLARIFY THE RULES GOVERNING AREA CODE RELIEF. [*Notice* Parts II(C)(3), II(E)(2), ¶¶ 202-219, 254-258].

Key Points:

- The Commission must establish specific numbering assignment and dialing parity guidelines to the extent it delegates numbering authority to the states.
- The Commission must clarify that service-specific overlays are *per se* unlawful.

Some parties have urged the Commission not to exercise its plenary authority over numbering administration but to permit local administrations to design their own dialing parity implementation plans and schedules, and to manage numbering issues according to local concerns and conditions.[2/] Vanguard strongly disagrees with this approach. Rather,

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1/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the "1996 Act").

2/ *See e.g.* Comments of Michigan Public Service Commission at 2, 6; Comments of Ameritech at 14, 23-24; Comments of Pacific Telesis Group at iii; Comments of Louisiana PSC at 2-7. Unless otherwise indicated, all citations to comments refer to comments filed in this docket on May 20, 1996.

the Commission should satisfy its Congressional mandate by establishing national numbering and dialing parity guidelines.[3/]

To date, state numbering policies and local efforts to address area code exhaustion concerns have resulted in confusion and anti-competitive proposals that, if pursued or adopted, would impede the development of competition in the wireline and wireless telecommunications markets. PageNet, for example, describes how unconstrained state action, in conjunction with incumbent local exchange carrier ("LEC") involvement, can result in assignment delays and exhaustion issues that could have been avoided if clear, national guidelines existed. Indeed, the lack of specific guidelines and resistance to the little federal guidance that now exists have delayed the adoption of relief plans and inconvenienced wireless customers, who have been forced to accept discriminatory dialing requirements and other differences that directly affect their access to numbering resources. In some instances, wireless carriers have been temporarily denied any access to numbering resources.[4/]

Commission efforts to set national numbering policies in the past have been ineffective as states continue to accept unlawful and discriminatory area code relief plans. For example, the Public Utility Commission of Texas continues to pursue authority to order

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3/ *See* 47 U.S.C. § 251(e) ("The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.").

4/ *See* Comments of Paging Network, Inc. ("PageNet") at 11-15. Even in Illinois where the FCC declared a proposed wireless overlay unlawful, wireless carriers were denied prompt access to numbering resources as the state commission "succumbed to demands arising from forces external to its regulatory process." *Id.* at 13 n. 10.

service-specific overlays, despite the Commission's determination in the *Ameritech Order*.[5/] The Commission plainly stated in the *Ameritech Order* that the "assignment of numbers based on whether the carrier provides wireless service is not consistent with [the Commission's] objectives and could hinder the growth and provision of new beneficial services to customers," and that it did not want the defective aspects of the Illinois plan to "appear in plans now being drawn for other areas of the country."[6/] Nevertheless, Texas believes that additional guidance is necessary. Without clear federal guidelines as to acceptable, legal numbering policies, Texas and other states will continue to defy FCC authority over the administration of this nation's scarce numbering resources.

Indeed, Texas is not the only state that seeks the discretion to ignore the requirements of the *Ameritech Order*. State commissions participating in this proceeding have stated their desire to adopt numbering policies that they determine to be necessary, regardless of federal action.[7/] Unless fast-growing wireless carriers and new entrants have timely access to numbers on a non-discriminatory basis, the Commission's efforts to promote competition will be futile. Indeed, if the Commission does not set appropriate boundaries for state action, its pro-competitive objectives will remain unrealized as state regulators strip Commission initiatives of their effect.

5/ *See Ameritech Order*, 10 FCC Rcd 4596 (1995); *Petition for Expedited Declaratory Ruling*, Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas at 5 (filed May 10, 1996) ("Texas Petition").

6/ *See Ameritech Order*, 10 FCC Rcd at 4603, 4608-09.

7/ *See* Comments of Michigan Public Service Commission at 6-8; Comments of the Pennsylvania Public Utility Commission at 4, 6-8.

The Commission should respond to these concerns by adopting specific rules governing area code relief. Consistent with the *Ameritech Order,* the rules should forbid service-specific overlays. As Vanguard and others showed in their comments, service-specific overlays plainly discriminate against the carriers in the services that are subject to the overlay.[8/] Wireless-only overlays are particularly pernicious because they would make it much harder for CMRS providers to compete against landline carriers, eliminating an important source of potential competition to existing local exchange monopolies.

The Commission also should take note of the objections that some parties raise to overlays generally.[9/] While the Commission should consider adopting some of the requirements these parties propose to avoid the anticompetitive effects of all-service overlays, it also should be aware that the very concerns that make prospective new entrants wary of all-service overlays are even greater for service-specific overlays. Moreover, the safeguards that these parties propose, such as number portability and ten-digit dialing, cannot entirely erase the stigma that a service-specific overlay would create. Consequently, the Commission should adopt a blanket prohibition on service-specific overlays, regardless of any action it takes concerning all-service overlays.

8/ *See* Comments of Vanguard at 5-6; Comments of PageNet at 4, 8; Comments of SBC Communications, Inc. at 11.

9/ *See* Comments of Teleport Communications Group Inc. at 5-6 (indicating that mandatory 1 + 10-digit dialing and number portability should be conditions of implementing an overlay); *see also* California PUC Decision 95-80-052 at 55, 57 (same); Comments of MFS Communications, Inc. at 3-5 (arguing that the FCC should declare overlay plans that require new entrants to adopt non-standard dialing arrangements to be unlawful).

III. THE COMMENTS SHOW THERE IS A NEED FOR SPECIFIC REQUIREMENTS GOVERNING NXX CODE ASSIGNMENTS. [*Notice* Part II(E)(2), ¶¶ 254-258].

Key Points:

- Immediate Commission action, through the establishment of national guidelines and numbering assignment parameters, is required to ensure even-handed assignment of NXX codes.
- Until NXX assignment functions are transferred to an independent third party, it is particularly important for the Commission to establish national numbering assignment guidelines.
- Consistent with Section 251(e) of the 1996 Act, the Commission must adopt rules that prevent discriminatory assignment policies, including the imposition of code opening charges.

Incumbent LECs would have the Commission believe that current NXX code assignment policies are sufficient to guard against anti-competitive practices and that Bellcore and the BOCs, with the cooperation of the states, will make assignment determinations that will not hinder the development of competition in telecommunications marketplace.[10/] Simply put, they are wrong. Immediate Commission action, through the establishment of national guidelines and numbering assignment parameters, is required to ensure even-handed assignment of NXX codes. The record in this proceeding attests to the fact that the assignment of numbering resources continues to be plagued by discriminatory, dilatory and anti-competitive practices that must be addressed in the near-term.

10/ *See* Comments of Ameritech at 22-24; Comments of Pacific Telesis Group at 11-13.

It is particularly important for the Commission to act because the NXX assignment functions of incumbent LECs have yet to be transferred to an independent third party.[11/] Despite the existence of "neutral" industry guidelines, LECs continue to discriminate in managing central office codes. At least two complaints have been filed against LECs regarding their assignment practices in recent months.[12/] Omnipoint's experience also illustrates the problems that have occurred, and continue to occur, when parties directly interested in numbering resources are charged with the responsibility of their assignment.[13/] Moreover, some LECs continue to discriminate against new entrants by selectively levying code opening charges when they assign central office codes to wireless service providers and other competitive carriers. Indeed, these charges can range from zero for co-carriers, to up to tens of thousands of dollars for other telecommunications carriers.[14/] Such disparate treatment cannot be tolerated by the Commission. It also demonstrates the need for federal NXX assignment requirements, including appropriate time parameters for addressing requests for numbering resources.

11/ *See* Comments of Teleport Communications Group at 3 (until the FCC has put in place an impartial code administrator, it has not satisfied its statutory obligation under the 1996 Act); Comments of Omnipoint Corporation at 3 (the benefits of the pro-competitive policies that Congress and the Commission have established cannot be realized unless the North American Numbering Council becomes a working body and acts in a timely manner).

12/ *See* Comments of Cox Communications, Inc. ("Cox") at 7.

13/ *See* Comments of Omnipoint Corporation at 1-2 (recounting LEC opposition to numbering assignments without evidence that Omnipoint failed to meet established criteria for assignment).

14/ Comments of Cox at 7.

Commission action is important because non-discriminatory access to numbering resources is crucial to the development of competition and to the continuing growth of the Commercial Mobile Radio Services ("CMRS") industry.[15/] Unless telecommunications carriers — both wired and wireless — can obtain numbers on a timely basis and on reasonable and non-discriminatory terms and conditions, they will be unable to compete with incumbent carriers. Accordingly, consistent with Section 251(e) of the 1996 Act, the Commission must adopt rules that prevent discriminatory assignment policies, including the imposition of code opening charges.

IV. CONCLUSION

The comments filed in this proceeding demonstrate the very real and immediate need for Commission oversight over dialing parity and numbering assignment policies. Indeed, as LECs and state commissions argue more vehemently for authority to craft their own "resolutions" to numbering issues, it becomes increasingly obvious that broad exercise of Commission authority is required to ensure a consistent, non-discriminatory framework for accommodating significant and, at times, competing needs for numbering resources and to comply with the Congressional mandate for a national numbering policy.

The Commission must act swiftly to resolve these critical numbering issues in compliance with its statutory deadline.[16/] For all these reasons, Vanguard Cellular Systems,

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15/ *See* Comments of Sprint Corporation at 12.

16/ *See* 47 U.S.C. § 251(d)(1) (setting six month deadline for implementation of regulations - August 8, 1996).

Inc. respectfully requests the Commission to act in accordance with its comments and these reply comments.

Respectfully submitted,

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June 3, 1996

CERTIFICATE OF SERVICE

I, V. Lynne Lyttle, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 3rd day of June, 1996, I caused copies of the foregoing "Reply Comments of Vanguard Cellular Systems, Inc." to be served via hand-delivery, to the following:

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